UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SHANNON FREMGEN, MARY CHRISTOPHERSON-JUVE, DENISE DELEON, SANDRA WILDE, MICHAEL WILDER, on behalf of themselves and all others similarly situated,

Plaintiffs,

ν.

AMAZON.COM, INC.; HACHETTE BOOK GROUP, INC; HARPERCOLLINS PUBLISHERS L.L.C.; MACMILLAN PUBLISHING GROUP, LLC; PENGUIN RANDOM HOUSE LLC; SIMON & SCHUSTER, INC.,

Defendants.

JORDAN SACKS, individually and on behalf of all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

BONNIE WEINBERGER, on behalf of herself and all others similarly situated,

Plaintiff,

ν.

AMAZON.COM, INC.,

Defendant.

Case Number 1:21-cv-351-GHW-DCF

JOINT STIPULATION AND [PROPOSED]
ORDER FOR CONSOLIDATION AND
SETTING DEADLINES

Case Number 1:21-cv-421-GHW-DCF

Case Number 1:21-cv-615-GHW-DCF

MARIACRISTINA BONILLA on behalf of herself and all others similarly situated,

Plaintiff,

ν.

AMAZON.COM, INC.,

Defendant.

ETHAN SILVERMAN and JEFFERY TOMASULO, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC.; HACHETTE BOOK GROUP, INC; HARPERCOLLINS PUBLISHERS L.L.C.; MACMILLAN PUBLISHING GROUP, LLC; PENGUIN RANDOM HOUSE LLC; SIMON & SCHUSTER, INC.,

Defendants.

JEFFREY COOK, and SUSAN COOK, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC.; HACHETTE BOOK GROUP, INC; HARPERCOLLINS PUBLISHERS L.L.C.; MACMILLAN PUBLISHING GROUP, LLC; PENGUIN RANDOM HOUSE LLC; SIMON & SCHUSTER, INC.,

Defendants.

Case Number 1:21-cv-01130

Case Number 1:21-cv-01256

Case Number 1:21-cv-01369-GHW

CECILY LERNER, on behalf of herself and all others similarly situated,

Plaintiff,

ν.

AMAZON.COM, INC.; HACHETTE BOOK GROUP, INC; HARPERCOLLINS PUBLISHERS L.L.C.; MACMILLAN PUBLISHING GROUP, LLC; PENGUIN RANDOM HOUSE LLC; SIMON & SCHUSTER, INC.,

Defendants.

Case Number 1:21-cv-01561

1. WHEREAS, there are seven related proposed class actions currently pending before this Court: (1) Fremgen v. Amazon.com, Inc., Case No. 1:21-cv-351-GHW-DCF (S.D.N.Y. filed January 14, 2021) (the "Fremgen" Action); (2) Sacks v. Amazon.com, Inc., Case No. 1:21-cv-421-GHW-DCF (S.D.N.Y. filed January 18, 2021) (the "Sacks" Action); (3) Weinberger v. Amazon.com, Inc., Case No. 1:21-cv-615-GHW-DCF (S.D.N.Y. filed January 22, 2021) (the "Weinberger" Action); (4) Bonilla v. Amazon.com, Inc., Case No. 1:21-cv-1130 (S.D.N.Y. filed February 10, 2021) (the "Bonilla" Action); (5) Silverman v. Amazon.com, Inc., Case No. 1:21-cv-01256 (S.D.N.Y. filed February 11, 2021) (the "Silverman" Action); (6) Cook v. Amazon.com, Inc., Case No. 1:21-cv-01369-GHW (S.D.N.Y. filed February 17, 2021) (the "Cook" Action); and (7) Lerner v. Amazon.com, Inc., Case No. 1:21-cv-01561 (S.D.N.Y. filed February 22, 2021) (the "Lerner" Action)¹;

¹ As of the filing of this stipulation, the *Bonilla* Action and the *Lerner* Action have not yet been assigned.

- 2. WHEREAS, Plaintiffs in the Fremgen, Sacks, Weinberger, Bonilla, Silverman, Cook and Lerner Actions ("Plaintiffs"), along with Defendant Amazon.com, Inc., Defendant Hachette Book Group, Inc., Defendant HarperCollins Publishers LLC, Defendant Macmillan Publishing Group, LLC, Defendant Penguin Random House LLC and Defendant Simon & Schuster, Inc. (together, the "parties"), by and through their respective counsel, agree that consolidation of the Fremgen, Sacks, Weinberger, Bonilla, Silverman, Cook and Lerner Actions is appropriate because the Actions involve common questions of law and fact in that each involves materially similar claims that Defendants engaged in anticompetitive conduct, as a result of which Plaintiffs were overcharged for eBooks purchased through retailers other than the Defendant Amazon.com, Inc.;
- 3. WHEREAS, on January 21, 2021, the Court was referred and accepted the Sacks Action as a related case to the Fremgen Action; on February 10, 2021, the Weinberger Action was accepted by this Court as related to the Fremgen Action; on February 11, 2021, the Bonilla Action was referred to this Court as possibly related to the Fremgen Action and Plaintiffs in the Silverman Action filed a statement of relatedness to the Fremgen Action; on February 19, 2021, the Cook Action was accepted by this Court as related to the Fremgen Action; and on February 22, 2021, Plaintiff in the Lerner Action filed a statement of relatedness to the Fremgen Action.
- 4. WHEREAS, on February 4, 2021, plaintiffs in the *Fremgen* Action filed an amended complaint and named additional defendants;
- 5. WHEREAS, on February 23, 2021, plaintiffs in the *Fremgen* Action filed an unopposed motion in each of the seven related cases for appointment of Hagens Berman Sobol Shapiro LLP as interim lead counsel;

- 6. WHEREAS, in view of the parties' stipulation to consolidate, the parties propose, subject to Court approval, that this Action proceed on the following schedule:
 - (a) Plaintiffs shall file a consolidated amended complaint within 45 days after entry of an order or orders consolidating the *Fremgen*, *Sacks*, *Weinberger*, *Bonilla*, *Silverman*, *Cook* and *Lerner* Actions and appointing interim co-lead counsel for the putative plaintiff class ("interim class counsel"); Defendants shall file an answer to the consolidated amended complaint or motion(s) to dismiss the consolidated amended complaint by 90 days after appointment of interim class counsel; if a motion to dismiss is filed, Plaintiffs shall file a letter by 100 days after appointment of interim class counsel indicating whether they desire to further amend their complaint in response to the motion to dismiss;
 - (b) If a second amended complaint is not filed, Plaintiffs shall file all oppositions 135 days after appointment of interim class counsel, and Defendants shall file all replies within 165 days of appointment of interim class counsel;
 - (c) Any second consolidated amended complaints must be filed within 120 days of appointment of interim class counsel; if Plaintiffs elect to further amend, Defendants shall file their motion(s) to dismiss by 165 days after appointment of interim class counsel; Plaintiffs shall file their oppositions to the motions by 210 days after appointment of class counsel, and Defendants shall file their replies within 240 days of appointment of interim class counsel;
- 7. WHEREAS, the parties agree that if Defendant answers, moves, or otherwise responds to any other action arising out of the same or similar operative facts as the *Fremgen*, *Sacks*, *Weinberger*, *Bonilla*, *Silverman*, *Cook* and *Lerner* Actions before their deadline to respond to the consolidated amended complaint in this Action, it must concurrently answer, move or

respond to: (1) the consolidated complaint; or (2) if the consolidated complaint has not yet been filed, the complaints in the *Fremgen*, *Sacks*, *Weinberger*, *Bonilla*, *Silverman*, *Cook* and *Lerner* Actions;

- 8. NOW THEREFORE, the parties through their respective counsel and subject to the Court's approval hereby stipulate that:
 - (a) The following Actions pending in this District, and any other class action arising out of the same or similar operative facts now pending or hereafter filed in removed to or transferred to this District shall be consolidated for all purposes, including pretrial proceedings, trial and appeal, pursuant to Federal Rule of Civil Procedure 42(a) (hereafter the "Consolidated Action"):
 - (i) Fremgen v. Amazon.com, Inc., Case No. 1:21-cv-351-GHW-DCF
 - (ii) Sacks v. Amazon.com, Inc., Case No. 1:21-cv-421-GHW-DCF
 - (iii) Weinberger v. Amazon.com, Inc., Case No. 1:21-cv-615-GHW-DCF
 - (iv) Bonilla v. Amazon.com, Inc., Case No. 1:21-cv-01130
 - (v) Silverman v. Amazon.com, Inc., Case No. 1:21-cv-01256
 - (vi) Cook v. Amazon.com, Inc., Case No. 1:21-cv-01369-GHW
 - (vii) Lerner v. Amazon.com, Inc., Case No. 1:21-cv-01561
 - (b) All papers filed in the Consolidated Action must be filed under Case No. 1:21-cv-351, the number assigned to the first-filed case, and must bear the following caption:

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In Re Amazon.com, Inc. eBook Antitrust Litigation

Case Number 1:21-cv-351

- (c) The case file for the Consolidated Action will be maintained under Master File No. 1:21-ev-351.
- (d) The Clerk is directed to administratively close the following related cases:
 - (i) Sacks v. Amazon.com, Inc., Case No. 1:21-cv-421-GHW-DCF
 - (ii) Weinberger v. Amazon.com, Inc., Case No. 1:21-cv-615-GHW-DCF
 - (iii) Bonilla v. Amazon.com, Inc., Case 1:21-cv-0113
 - (iv) Silverman v. Amazon.com, Inc., Case No. 1:21-cv-01256
 - (v) Cook v. Amazon.com, Inc., Case No. 1:21-cv-01369-GHW
 - (vi) Lerner v. Amazon.com, Inc., Case No. 1:21-cv-015610
- (e) Any proposed class action subsequently filed in, transferred or removed to this Court that arises out of the same or similar operative facts as the Consolidated, Action will be consolidated with the Consolidated Action.
- (f) The following deadlines will be set:
 - (i) Plaintiffs shall file a consolidated amended complaint within 45 days after entry of an order or orders consolidating the Fremgen, Sacks, Weinberger, Bonilla, Silverman, Cook and Lerner Actions and appointing interim class counsel; Defendants shall file an answer to the consolidated amended complaint or motion(s) to dismiss the consolidated amended complaint by 90 days after appointment of interim class counsel; If a motion to dismiss is filed, Plaintiffs shall file a letter by 100 days after appointment of interim class counsel indicating whether they desire to further amend their complaint in response to the motion to dismiss;
 - (ii) If a second amended complaint is not filed, Plaintiffs shall file all oppositions 135 days after appointment of interim class counsel, and Defendants shall file all replies within 165 days of appointment of interim class counsel;
 - (iii) Any second consolidated amended complaints must be filed within 120 days of appointment of interim class counsel; if Plaintiffs elect to further amend, Defendants shall file their motion(s) to dismiss by 165 days after appointment of interim class counsel; Plaintiffs shall file their oppositions to the motions by 210 days after appointment of class counsel, and Defendants shall file their replies within 240 days of appointment of interim class counsel;

(g) If, during the course of the schedule outlined in paragraph 8(f), Defendant answers, responds or moves to dismiss a complaint relating to claims arising out of the same or similar operative facts as the *Fremgen*, *Sacks*, *Weinberger*, *Bonilla*, *Silverman*, *Cook* and *Lerner* Actions, Defendant will answer, move, or otherwise respond to:

(1) the consolidated complaint; or (2) if no consolidated amended complaint has been filed, the complaints in the *Fremgen*, *Sacks*, *Weinberger*, *Bonilla*, *Silverman*, *Cook* and *Lerner* Actions no later than the same date on which Defendant responds to the other action(s).

IT IS SO STIPULATED.

Dated: February 24, 2021

Dated: February 24, 2021

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Dated: February 24, 2021

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Dated: February 24, 2021

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PROPOSED ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 24, 2021

HONORABLE GREGORY H. WOODS UNITED STATES DISTRICT JUDGE

Rider with Respect to May 24, 2021 Consolidation Order Hon. Gregory H. Woods

In the event that any Defendant wishes to file a motion to dismiss the consolidated amended complaint, it must file a pre-motion conference request with the Court in accordance with its Individual Rules of Practice in Civil Cases no later than 30 days prior to the due date for said motion to dismiss pursuant to Paragraph 8(f)(i) of this order. The Court will establish a briefing schedule with respect to the proposed motion to dismiss at that conference or in response to the pre-motion conference request letter.